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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	CS Docket No. 95-61

REPLY COMMENTS OF SCRIPPS HOWARD

Scripps Howard Cable TV Company ("Scripps Howard") submits these Reply Comments in response to the comments filed by BellSouth Telecommunications, Inc. ("BellSouth") in the captioned proceeding.

In response to the Commission's 1995 inquiry into the status of competition in the market for the delivery of video programming, BellSouth asserts that "[e]vents since the release of the 1994 Report have substantially diminished VDT's prospects for becoming a significant competitive alternative to cable television."[1] While long on hyperbole regarding ill defined hurdles that supposedly face the "disadvantaged" LECs, BellSouth's comments are sorely lacking in empirical support and ultimately merely reassert old, tired and previously rejected arguments. Little more than a self-serving complaint about the state of the law, BellSouth's comments contribute nothing meaningful to the Commission's analysis of the status of competition in the market for the delivery of video programming.

[1] BellSouth Comments at 2.

The only "event" cited by BellSouth that has occurred since the release of the 1994 Report is the Commission's clarification in the Video Dialtone Recon Order that "anchor programmer" proposals, which BellSouth strongly supported,[2] are inconsistent with the common carrier basis of video dialtone and therefore are not allowed.[3] All of BellSouth's other points of discussion merely take issue with longstanding legal requirements imposed on common carriers and cable operators.

For example, BellSouth complains that both Section 214 and local cable franchising requirements for LECs provide competitors with "an advance copy of a telephone company's game plan. . . ."[4] What BellSouth's comments overlook, however, is that, generally, under local ordinances, *all* companies wishing to enter the cable business, including Scripps Howard, must reveal significant elements of their business plans to local cable franchising authorities, competitors and the public. Moreover, BellSouth overlooks the fact that the requirement that LECs obtain Section 214 authorization before constructing and providing video systems is not merely a policy decision by the Commission, but rather is a longstanding, statutorily imposed requirement for common carrier services that the Commission is powerless to overlook.

BellSouth is similarly off-base with its attack on "level playing field" laws. While Scripps Howard concurs that level playing field laws should not be used discriminatorily against LECs, BellSouth appears to contend that it should not be subject to the same requirements as are other market participants. Level playing field laws were enacted to prevent over-build abuses such as

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[2] In the Matter of Application of BellSouth Telecommunications, W-P-C-6977, Application at 7.

[3] Telephone Company - Cable Television Cross-Ownership Rules, Sections 63.54-63.58, 10 FCC Rcd 244, ¶ 35 (1994) ("Video Dialtone Recon. Order").

[4] BellSouth Comments at 3.

cream skimming, as well as LEC abuses such as cross-subsidization and monopoly leveraging. Clearly, there is no reason why BellSouth should not be subject to the same service and other requirements as Scripps Howard or any other cable operator with whom it intends to compete. Indeed, BellSouth's complaints regarding the dual regulatory burden it faces completely overlook the simple fact that it is BellSouth's choice to operate what are, in essence, two businesses (one common carrier, one cable) through a single entity (VDT) and over the same facilities. Just because it chooses to do so does not mean it should be able to escape the federal or local regulatory requirements applicable to either or both businesses.

In addition to being irrelevant to the Commission's inquiry, BellSouth's scattershot attacks on cable operators and assertions regarding the balance of market power are simply incorrect. For example, BellSouth asserts that the "incumbent cable operator" in its video dialtone service area — Scripps Howard — has "engage[d] in a variety of anti-competitive behaviors" by requesting capacity on BellSouth's video dialtone system.[5] BellSouth's purportedly anonymous attack on Scripps Howard is groundless. BellSouth applied for, and was granted, authority to provide video transport facilities on a *common carrier* basis.[6] The linchpin of common carrier service is that the carrier hold out its services to all on an equal, nondiscriminatory basis.[7] Scripps Howard has chosen to utilize BellSouth's service as part of its system upgrade, by becoming one of the many programmer customers that will transmit video programming to subscribers over BellSouth's system. Scripps Howard's use of BellSouth's system in no way

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[5] BellSouth Comments at 3.

[6] BellSouth Telecommunications, Inc., DA 95-181 (Con. Car. Bur. released Feb. 8, 1995)

[7] NCTA v. FCC, 33 F.3d 66, 75 (D.C. Cir. 1994) ("Video dialtone is a common carriage service, the essence of which is an obligation to provide service indifferently to all comers").

"undermines the competitive viability of the VDT model,"[8] because, as the Commission foresaw, a common carrier video dialtone system will allow multiple programmer customers to compete amongst each other while utilizing the same facilities.[9] Scripps Howard's allotment of 7 channels[10] leaves ample channel capacity for BellSouth to serve its other programmer-customers, and for those programmer-customers to be competitive. BellSouth's vague references to "anticompetitive behavior" are simply lacking in empirical basis and demonstrate that BellSouth's comments were not intended to inform the Commission about the current status of competition but to rehash the merits of its video dialtone plans.

Indeed, the ultimate theme of BellSouth's comments — that cable operators are engaged in mass anticompetitive behavior, and BellSouth is but a powerless start-up company — is absurd in light of the well-documented history of the telco-cable relationship. The Commission is well aware of the propensity and ability of the LECs to abuse their monopoly power to the detriment of cable operators, as they did just that in the 1960's and 1970's prior to the implementation of the telco-cable cross-ownership ban.[11] Contrary to BellSouth's assertion, its control over the government-granted local exchange monopoly gives it the economic and technical power to

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[8] BellSouth Comments at 3.

[9] Video Dialtone Recon Order, 10 FCC Rcd. at 259.

[10] Given that BellSouth has tentatively allotted only seven channels to Scripps, it thus certainly cannot be said that Scripps' presence on the platform is in any sense "anti-competitive" or that it "dilut[es] the strength of possible alternative video programming packages..." *Id.*

[11] See, e.g., Better TV, 31 F.C.C.2d 939, 955 (1971), modified, 34 F.C.C. 2d 142 (1972); United Tel. Co. of Pa., 40 F.C.C.2d 359, 361 (1973); Radio Hanover, Inc. v. United Utils., Inc., 273 F. Supp. 709 (M.D. Pa. 1967); Manatee Cablevision, Inc., 22 F.C.C.2d 841, 846, 848 (1970), vacated, 35 F.C.C. 2d 639 (1972); Telecable Corp., 19 F.C.C.2d 574, 589 (1969); Section 214 Certificates, 21 F.C.C.2d 307, 316, modified, 22 F.C.C.2d 746 (1970), aff'd sub nom., General Tel. Co. v. United States, 449 F.2d 846 (5th Cir. 1971).

dominate the video distribution market. The Commission must not allow BellSouth's groundless assertions and not-so-veiled threats[12] to lessen, discourage or diminish federal oversight of the LECs and their video dialtone plans.

Respectfully Submitted,

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[12] BellSouth Comments at 4 ("Under these adverse circumstances, BellSouth is unlikely to pursue VDT").